

FIRST CIRCUIT COURT
STATE OF HAWAII
FILED

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Florence Puana, individually, and as Trustee of the
Florence M. Puana Semi-Revocable Living Trust,
dated September 15, 1992, and Gerard K. Puana,
individually, and as Trustee of the Gerard K. Puana
Revocable Trust, dated January 19, 2007

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H. MIYATA
OLYMPUS

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

FLORENCE PUANA, INDIVIDUALLY, AND AS TRUSTEE OF THE FLORENCE M. PUANA SEMI-REVOCABLE TRUST, DATED SEPTEMBER 15, 1992; GERARD K. PUANA, INDIVIDUALLY, AND AS TRUSTEE OF THE GERARD K. PUANA REVOCABLE TRUST, DATED JANUARY 19, 2007.

Plaintiffs/Counterclaim Defendants,
vs.

KATHERINE P. KEALOHA, INDIVIDUALLY,
AND KATHERINE P. KEALOHA AS FORMER
TRUSTEE OF THE GERARD K. PUANA
REVOCABLE TRUST, DATED JANUARY 19,
2007; JOHN DOES 1-10; JANE DOES 1-10; DOE
CORPORATIONS 1-10; DOE PARTNERSHIPS
1-10 AND DOE ENTITIES 1-10.

Defendant/Counterclaimant.

) CIVIL NO. 13-1-0686-03 [VLC]
)) [OTHER CIVIL ACTION]
))
)) PLAINTIFFS FLORENCE PUANA AND
)) GERARD PUANA'S MOTION FOR NEW
)) TRIAL; MEMORANDUM IN SUPPORT OF
)) MOTION; EXHIBITS 1 TO 36;
)) DECLARATION OF GERALD H.
)) KURASHIMA; NOTICE OF HEARING
)) AND CERTIFICATE OF SERVICE
))
))
))
)) **HEARING** Friday September 13
)) DATE: _____
)) TIME: **9:30 am**
)) JUDGE: **JAMES C. McWHINNIE**
))
))
))
)) TRIAL WEEK: JANUARY 12, 2015

PLAINTIFFS FLORENCE PUANA AND GERARD PUANA'S MOTION FOR NEW TRIAL

COME NOW Plaintiffs Florence Puana and Gerard Puana, by and through their attorney Gerald H. Kurashima, and moves for a new trial pursuant to HRCP, Rule 60(b)(6) based upon Katherine Kealoha's fraud upon the court. The underlying civil case is presently on appeal and pending before the Intermediate Court of Appeals for the State of Hawaii, as CAAP-16-0000060 and CAAP 16-0000409. This motion is supported by the attached memorandum, exhibits, Affidavit of Gerald H. Kurashima, the evidence adduced at trial and the pleadings and files herein.

DATED: Honolulu, Hawaii, AUG 22 2013



GERALD H. KURASHIMA

Attorney for Plaintiffs & Counterclaim Defendants
Florence Puana, individually, and as Trustee of the
Florence M. Puana Semi-Revocable Living Trust,
dated September 15, 1992, and Gerard K. Puana,
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MEMORANDUM IN SUPPORT OF MOTION FOR NEW TRIAL

Plaintiffs Florence Puana and Gerard Puana are entitled to a new trial based on Katherine Kealoha's fraud upon the court, based on evidence which came to light from the US Department of Justice ("Government") criminal prosecution and conviction of Katherine Kealoha in United States v. Katherine P. Kealoha aka Katherine E. Kealoha, aka Kathy Kealoha, aka Kat, aka Alison Lee Wong, Louis Kealoha, et. al., Case No 17 CR 0582-JMS-RLP in the U.S. District Court. The criminal Indictment filed October 19, 2017 in the "Mailbox" case recounted Katherine Kealoha's theft and misuse of Gerard Puana and Florence Puana funds. The Indictment was unsealed on October 20, 2017, a First Superseding Indictment was filed on March 22, 2018 and a Second Superseding Indictment was filed on May 24, 2018. The Indictment in the Mailbox case stated,

28. It was part of the conspiracy that L. Kealoha and K. Kealoha would improperly use their authority as public officials to prevent the discovery of their precarious financial condition and prior malfeasance involving the Trust Accounts, G.K.P. (Gerard K. Puana) and F.P. (Florence Puana).

29. It was further part of the conspiracy that the conspirator would target members of the community who threatened the power and financial condition of L. Kealoha and K. Kealoha, including G.K.P and F.P.

30. It was further part of the conspiracy that the conspirators would seek to discredit and intimidate such persons, including G.K.P. and F.P., by falsely alleging that such persons had engaged in criminal activity or were incompetent. (Indictment, CR-17-00582 [JMS], p. 15, Exhibit 1).

This civil case against Katherine Kealoha arose from her theft and misappropriation of funds of Florence Puana, Katherine Kealoha's aged grandmother. In March 2009, a "Joint Tenancy Account" was opened with Bank of Hawaii ("BOH"), Account number ***1502, under Katherine Puana Kealoha and Florence Puana. (Bank of Hawaii Joint Account Signature Card, Account ***1502, Exhibit 2). Florence Puana obtained \$513,484.11 from a "reverse mortgage" on her 3934 Nioi Place based on Katherine Kealoha misrepresentation that she would pay off the reverse mortgage within six months. The Greenwood Apt. 1803 was purchased with \$360,439.49 of the reverse mortgage funds. (Bank of Hawaii, October 2009 Statement, Exhibit 3). Title to the Greenwood Apt. 1803 was held by, "Katherine Kealoha, Trustee of the Gerard K. Puana Revocable Trust." (Apartment Deed to Trust, dated October 5, 2009, Exhibit 4). The remaining balance of Florence Puana's reverse mortgage funds in the joint account was \$148,514.64. In six months, from October 2009 to April 2010, Katherine Kealoha withdrew or spent the balance of Florence Puana's reverse mortgage funds in the joint account. (BOH Bank Statements, Exhibit 5). In addition,

Katherine Kealoha obtained \$70,000 from her uncle Gerard Puana which she claimed would be invested in her fictitious “investment hui” and failed to return his funds when demanded.

The Government’s Trial Brief, filed May 2, 2019 “Back Story” further described Katherine Kealoha’s fraud in the civil case against Gerard Puana and Florence Puana. (U.S. Trial Brief, filed May 2, 2019, Exhibit 6). Federal Judge Michael Seabright had orally denied Katherine Kealoha’s motion in limine to limit evidence of fraud against Gerard Puana and Florence Puana and stated,

“[T]he evidence that I will permit includes the alleged fraud from 2007 to 2009 based on the claim that Ms. Kealoha obtained approximately \$70,000 from Gerard to invest for him but only returned \$23,000 and essentially spent the rest.

I would also include the alleged fraud – and I don’t know if I have these time frames exactly right, but I have 2009 to 2011 is how I have this figured out, relating to the reverse mortgage, including how Ms. Kealoha failed to make reverse mortgage payments, how the funds were used to pay Kealoha personal expenses, how the condo was placed in trust with Ms. Kealoha as trustee, with the document notarized by Alison Lee Wong.”

(U.S. Trial Brief at pages 4-5, Exhibit 6)

On June 27, 2019, the jury in United States v. Katherine P. Kealoha. et. al., Case No 17 CR 0582-JMS-RLP returned guilty verdicts against Katherine Kealoha on Counts One, Two, Six and Eight of the indictment for conspiracy and attempt to obstruct an official proceeding. (Verdicts, CR No. 17-00582, filed June 27, 2019, Exhibit 7). The Government in the Mailbox case uncovered material evidence that Katherine Kealoha lied and committed perjury in the civil case, fabricated documents and used her fictitious alias, “Alison Lee Wong,” to fraudulently notarize the purported “Gerard Puana Revocable Trust” (hereafter “Trust). Katherine Kealoha was a licensed attorney and an “officer of the court,” whose perjury, misrepresentations and fabrications in the civil case was a fraud upon the court. Pursuant to Hawaii Rules of Civil Procedure (HRCP), Rule 60(b)(6), Plaintiffs are entitled to a new trial based on Katherine Kealoha’s fraud on the court.

I. BACKGROUND OF THE CIVIL CASE

A. KATHERINE KEALOHA LIED AT HER DEPOSITION AND TRIAL TESTIFYING UNDER OATH THAT SHE DID NOT RECOGNIZE THE “TRUST” SHE HAD TRANSMITTED TO FIRST AMERICAN TITLE, WHICH HER OWN ATTORNEYS HAD PRODUCED.

Katherine Kealoha committed perjury at her deposition and at trial regarding the purported “Trust.” If the information the Government obtained in the Mailbox case been available, it would have shown Katherine Kealoha’s actual fraud and deception by fabricating documents and lying under oath. The Government obtained evidence that Katherine Kealoha lied when she stated that she did not prepare the Gerard Puana “Trust,” that she gave her only copy to Central Pacific Home Loans and lied at her deposition and at trial by testifying that she did not recognize the “Trust.”

Gerard Puana never had a copy of the "Trust" and requested a copy from Katherine Kealoha through a First Request for Production of Documents, dated May 3, 2013:

1. Copies of all drafts and fully executed Gerard K. Puana Revocable Trust.

2. Copies of all drafts, correspondence, resignation and all other records or documents related to the Gerard K. Puana Revocable Trust.

* * *

9. Any and all correspondence, letters, memoranda and documents by Katherine Kealoha, individually, or Katherine Kealoha as Trustee of the Gerard K. Puana Revocable Trust, to Gerard Puana, or to the Gerard K. Puana Revocable Trust.

* * *

12. All letters, correspondence, documents, records, memoranda, email, receipts, checks with Kristina Sweet and/or First American Title Company, Inc.

(Plaintiff Gerard K. Puana, First Request for Production of Documents, Exhibit 8).

Katherine Kealoha did not produce the "Trust" or any related documents. (Defendants Katherine P. Kealoha's Response to First Request for Production of Documents, June 3, 2013, Exhibit 9). Katherine Kealoha's deposition was taken on June 19, 2013 where she lied and testified that, (1) she did not prepare the Gerard K. Puana Trust, (2) that Gerard Puana gave her a "computer-generated" trust and (3) that she gave her copy of the "Trust" to Central Pacific Home Loans.

Q. Prior to January 2007, how many trusts or estate plans had you worked on, if any?

A. None.

Q. So you never prepared any trust or estate planes for any client?

A. No.

Q. Now, you prepared the Gerard Puana Revocable Trust dated January 19, 2007?

A. No.

Q. You were the trustee?

A. Yes.

Q. You received a copy of the trust?

A. Yes, I did.

Q. What happened to your copy of the trust?

A. It was provided to Central Pacific Home Loans.

Q. Okay. Do you know who prepared the trust?

A. No. I think it was a computer-generated trust.

Q. You said that you provided the trust to – what was that company again?

A. Central Pacific Home Loans.

Q. This is for the reverse mortgage?

A. No.

Q. What was Central Pacific Home Loans? Why did they get the trust?

A. Because they had asked for it.

Q. Why did they ask for it?

A. Because Gerard tried to get a mortgage for the condo, the 1803 Greenwood.

Q. So Central Pacific Home Loans requested a copy of the trust from you because you were the trustee?

A. No, they requested a copy of it, and so I provided it to them.

- Q. So since you provided the copy, where is your copy?
A. I don't have a copy.
Q. So what happened to the copy since you provided Central Pacific Home Loans a copy of the trust?
A. I gave Central Pacific Home Loans the copy of the trust that I had.
Q. Why didn't you keep a copy of that?
A. It was a copy.
Q. So you don't have the trust, your copy of the trust?
A. I gave my copy of the trust to Central Pacific Home Loans.
Q. Why did you give them a copy of that?
A. Because they requested it.
Q. So if you didn't prepare the trust, Gerard Puana Trust, you said it was a computer-generated trust.
A. That's what it was.
Q. Who gave you this trust copy? Who gave you a copy of the trust?
A. Gerard Puana.

(Deposition of Katherine P. Kealoha, Vol. 1, dated June 19, 2013, pp. 38-41, Exhibit 10)

Gerard Puana did not prepare the "Trust" and Katherine Kealoha lied at her deposition by repeatedly testifying that she gave her copy of the "Trust" to Central Pacific Home Loans. This was a deliberately false statement made under "oath" by Katherine Kealoha, and not merely an equivocal statement. The Government in the Mailbox case obtained Katherine Kealoha's "transmittal letter" to First American Title with her copy of the "Trust," which stated in part,

"I apologize for the initial miscommunication; please find enclosed the check for \$3600, and a copy of The Revocable Trust of Gerard K. Puana. . . ."

(Transmittal Letter dated March 17, 2008, from Katherine Puana Kealoha, Esq. Government's Exhibit 69-1 (Exhibit 11) and Revocable Living Trust Agreement, Government's Exhibit 69-2, Exhibit 12).

Katherine Kealoha's transmittal letter and the attached "Trust" to First American Title was never produced by First American Title in response to a subpoena for documents. (Subpoena Duces Tecum (Exhibit 13), Notice of Taking Deposition upon Written Questions (Exhibit 14) and Response by Margaret Bowen, for First American Title Co., Exhibit 15). Plaintiffs first learned of these documents during the Mailbox criminal trial against Katherine Kealoha in June 2019.

B. KATHERINE KEALOHA DID NOT PRODUCE THE "TRUST" UNTIL SEPTEMBER 18, 2014 AND HER ATTORNEYS NEVER DISCLOSED THEY HAD THE "TRUST" IN MAY 2014.

Katherine Kealoha and her attorneys actually had the "Trust" by May 2014, but did not produce the "Trust" despite the First Request for Documents on May 3, 2013 and failed to inform the Court they had the Trust, at a Hearing on July 16, 2014. Gerard Puana had been living at the Greenwood Apt. 1803, but the building's property manager refused to communicate with him

because he was not the “Trustee,” and title was held by, “Katherine P. Kealoha, as Trustee of the Gerard K. Puana Revocable Trust.” (Apartment Deed to Trust, Exhibit 4)

On June 13, 2014, Gerard Puana filed a motion in the Civil Case to transfer title for the Greenwood Apt. 1803 from the “Gerard K. Puana Revocable Trust” to the Florence M. Puana Trust, since Apt. 1803 had been purchased with funds from the reverse mortgage on Florence Puana’s Nioi Place home. Gerard Puana’s Declaration stated in relevant part,

3. Katherine Kealoha claim she resigned as Trustee in April 2012, but prior to resigning as Trustee, she did not transfer title for the Greenwood Apt. 1803 to me as Successor Trustee, and has never provided me with a copy of the Trust. (Declaration of Gerard Puana, dated June 13, 2014, Exhibit 16).

Katherine Kealoha objected to the motion to transfer title of the Greenwood Apt. 1803 to the Florence Puana Trust. At the Hearing on July 16, 2014, Judge Crandall asked if Plaintiffs counsel had a copy of the “Trust” and was advised they did not have the “Trust” and that Katherine Kealoha was the last person to have the “Trust.” (Minutes of Hearing, July 16, 2014, Exhibit 17). Judge Crandall also questioned Katherine Kealoha’s attorney if he had a copy of the “Trust,” but only received an “evasive” response of, “I’ll have to look into that.” Katherine Kealoha’s attorneys never advised the court they had the “Trust.”

On September 18, 2014, Katherine Kealoha’s attorneys first produced and transmitted the purported “Trust,” which “was received from First American Title.” (Anthony Wong Transmittal Letter, September 18, 2014, Exhibit 18, “Revocable Living Trust Agreement,” Exhibit 19). Katherine Kealoha lied at her deposition that she gave her only copy to Central Pacific Home Loans. (Katherine Kealoha Deposition, Vol. 1, dated June 19, 2013, pp. 38-41, Exhibit 10), Also attached to the September 18, 2014 transmittal letter were two letters from the State of Hawaii, Department of the Attorney General, Notary Public Office regarding the notary “Allison L. Wong.” The first letter from the Notary Public Office was dated May 23, 2014 and referred to, “your letter dated May 9, 2014 about locating Allison L. Wong.” (Dept. of Attorney General, Letter dated May 23, 2014, Exhibit 20). The second letter dated July 14, 2014 responded to Katherine Kealoha’s attorneys “second request by letter dated May 27, 2014” and reiterated there was no record of any notary, active or inactive under various forms of the name “Alison Lee-Wong.” (Dept. of Attorney General, Letter dated July 14, 2014, Exhibit 21). Katherine Kealoha and her attorneys actually had the “Trust,” as early as May 9, 2014, but never produced the “Trust” requested in May 3, 2013, a full year earlier and never disclosed to Judge Crandall at the July 16, 2014 hearing.

C. KATHERINE KEALOHA LIED AT HER DEPOSITION AND AT TRIAL THAT SHE DID NOT RECOGNIZE THE "TRUST."

Katherine Kealoha was deposed and questioned about the "Trust" was "produced" on September 18, 2014. (Exhibit 71 to Katherine Kealoha's Deposition, dated September 26, 2014, Exhibit 22). This was the same "Trust" produced by Katherine Kealoha's attorneys which was received from First American Title. However, Katherine Kealoha testified at her deposition that she did not recognize the "Trust" although she acknowledge it was her signatures on the "Trust." Katherine Kealoha testified the "Trust" she signed did not have "black borders" around the pages and there were no "blank" spaces next to the signature line, but there was a long signature line.

Q. Okay. Exhibit 71. This is the Revocable Living Trust Agreement. Do you recognize this document? If you look at the third from the last paged, third form the last page. I don't know if there a page number. There's no page number. But on the top it says Article IX.

A. Yes.

Q. Power of Attorney?

A. Yes.

Q. Do you recognize your signature?

A. Yes.

* * *

Q. Okay. If you look at the next page, notary was – it looks like Alison L. Wong?

A. Yes.

Q. Do you know who that is?

A. I know an Alison Wong but I don't know if that's her signature.

Q. Did you arrange to have Alison Wong notarize this document?

A. No.

Q. Do you remember where this document was signed?

A. Actually, I don't recall this document.

Q. You don't recall the document. You recognize the signatures?

A. Yes.

Q. So those are your signatures?

A. Yes, they are.

Q. But you don't recall the document?

A. No. I don't believe that this is the document that I signed.

Q. So have you ever seen this document before?

A. Yes.

Q. And when did you see this document?

A. At my attorney's office.

Q. That was recently?

A. Yes.

Q. You didn't provide this document to your attorney?

A. No, I did not.

* * *

- Q. Is this the trust agreement that you had provided to – the last deposition, you said Central Pacific Home Loans. Is this the trust document?
A. No, it's not.
- Q. At the last deposition, you were asked to check if you could find another copy of the trust agreement, the Gerard Puana Trust Agreement?
A. Yes, that's correct.
- Q. Did you locate?
A. No, I did not.
- Q. Is there any page of this document that you recall?
A. No, there is not.
- Q. But you do recognize your signature on the page that says Article IX, Power of Attorney?
A. Yes, I do.
- Q. That is your signature?
A. Yes
- Q. If you look through the document, would you be – do you recognize any page and if so, can you identify which page you may recognize?
* * *
- A. I'm looking through the document. This is not the same document that I signed.
Q. Do you recall if the document that you signed, did it have this border around the document? In this case, do you see the black border on each page?
A. I don't recall there being a border on the document that I signed.
Q. So that's one of the differences regarding –
A. Yes.
Q. Can you think of other differences? Was it numbered, for example, the document that you signed?
A. I don't remember if it was numbered but I do remember that there were no empty places. There were no empty spaces. And I do recall the document that I signed had a date spot where I signed and dated it. And this one does not have a date.
Q. So the trust that you recall signing next to the signature block also – next to where you signed, also had date for you to put in?
A. Yes.
Q. Write in at the time?
A. Yes, And it was a long line.
* * *
- Q. And you don't recall having the document that you signed having this blank spot?
A. No, I don't.
Q. This says that it was signed on the 19th day of January 2007. That's on this power of attorney page. If you look just before the signatures.
A. Yes.
Q. When you signed the document that you signed, was Gerard Puana with you?
A. Yes.
Q. And there was also this Alison Wong who was the notary?
* * *
- A. I don't recall Alison Wong being present nor do I think that she's the one who notarized the document.
Q. Was there a notary present on – when you signed the document?

- A. We went to see a notary and I think. . . we went to see a notary and I notarized it.
Yes. That's correct. And I know that I notarized it. I mean and it was notarized
when we went to go see the notary.
- Q. You said you notarized it --
- A. I meant I signed it and, you know, the notary --
- Q. It was notarized by the notary?
- A. Yes.
- Q. Are you a notary?
- A. No, I'm not.

* * *

- Q. But this document which is Exhibit Number 71, your testimony is that this was not
the same document that you signed which was the Gerard Puana Trust?
- A. No. This is not the document.
- Q. But the signatures in this document are your signatures?
- A. The two signatures on the second to the last page under Power of Attorney look like
my signatures. And just the document itself does not – is not the same document.
(Katherine Kealoha's Deposition, Vol. II, dated September 26, 2014, pp. 67-75, Exhibit 23)
Katherine Kealoha lied at her deposition that the "Trust" her own attorneys obtained from
First American Title was not the same document she signed. At the civil trial, Katherine Kealoha
also lied about the purported "Trust." (Revocable Living Trust, Trial Exhibit P-45, Exhibit 24).

- Q. Do you have P-45? Oh, here it is. You were asked about P-45, which is a document
titled Revocable Living Trust Agreement.
- A. Yes.

* * *

- Q. This is – like I said, it's identified as a revocable living trust agreement. An on the
third to the last page – Do you have it: There's some signatures?
- A. Yes.
- Q. You have identified your signature on this document; is that correct?
- A. This is my signature. I identify it. But I did not sign this document.
- Q. So that's your signature on this document, though – on this particular document. But
you're saying you didn't sign this document?
- A. Yes. This is my signature. There are two of them.
- Q. Okay.
- A. But I did not sign this document.
- Q. Do you recognize the other signature on this page?
- A. This is what we had discussed earlier. That looks like Gerard's signature, but it's
very shaky. So I'm not sure if that is.
- Q. Now, when you – you id sign a revocable trust agreement?
- A. Yes, I did.
- Q. And when you signed it, was Gerard Puana present?
- A. Yes, he was.
- Q. Was there a notary present?
- A. Yes.
- Q. On the following page, do you recognize the name?

- A. Through our discovery, there is no notary public with that name. (Note: The name shown on Exhibit P-45 is "Alison L. Wong").
* * *
- Q. Now, can you look at the first page of this document. Now, you had this – you had a revocable trust agreement – Gerard Puana revocable trust agreement?
- A. Yes.
- Q. And you said that you had given it to Shari Motooka-Higa?
- A. I gave it to the people at Central Pacific Home Loans in a packet they had requested, yes.
- Q. So that was your only copy?
- A. Yes.
- Q. And you had read that agreement before?
- A. Yes, when -- before I notarized it, you know, I read it. He read it; he notarized it. It was the same thing.
- Q. And the document that you read when you signed it, did you have any questions about the way it was written or things were – should have been filled in, blanks –
- A. It was very short, just-a-couple-of-pages document. And before – before he notarized it, he, you know, went through it, gave it to the lady, did the stamp thing. And the – I had already read it, you know, right before. Read it. It's not thick like this (indicating). It was, like, a very short – just couple of pages. And, you know, I went through it, signed it. She did her stamp thing. So I had, you know, done the notary thing, like we were there for; and that was it.
- Q. How many pages was the document that you signed?
- A. I – I think it was no more than four or five pages. And it was not like how this is, where it's one notary for both. That document was -- there was one section that was – that had his information, and then he notarized that section. And then one section was for me and for me to notarize that section. So it wasn't the notary, like, doing both as the same time. It was separate. And this is just one.
- Q. Was the document that you signed on separate pages, like, only the front side, or was it two-sided, front and back?
- A. I – I think it was just the front page, back blank, and then four or five pages. That's it. That's what I recall.
- Q. Four or five pages all on one side print, or print on the front and back?
- A. One-sided.
- Q. One-sided. Okay. Did it have a border?
- A. Not that I can recall.
- Q. Do recall if there were page numbers?
- A. I don't recall if there were page numbers. Sorry.
- * * *
- Q. Could you look at the last page of this document. It's titled Schedule A.
- A. Yes.
- Q. That's a Schedule A to the document that you recall signing?
- A. Not that I recall. And not with – not with this attached. No.
- Q. Do you know where this document came from?
- A. Yes.
- * * *

A. So we subpoenaed all the documents from the title company and there was not trust agreement attached to it. And so my attorneys contacts the title company and asked them how come there was no trust agreement attached to the title documents, and so they said that the would follow up. And so the people from the title company contacted by attorneys and provided this to them.

Q. Now when you say "title company," is this the title company involved in the Greenwood transaction?

A. Yes.

* * *

Q. Can you recall anything else covered by the trust agreement that you had signed?

A. Not that I can recall. It was – I mean, it was a very short and simple document. It was just a couple of pages. It wasn't anything, you know – it wasn't anything like that, that's for sure.

(Katherine Kealoha's Trial Testimony, February 6, 2015, pages 56-64, Exhibit 25).

Katherine Kealoha also lied at trial that the "Trust," Exhibit P-45 was not the same document she signed. She admitted her signatures were on the "Trust," but claimed the trust she signed only four to five pages long, did not have black borders and did not have a "Schedule A."

The Government obtained Katherine Kealoha's March 17, 2009 transmittal letter to First American Title with the attached "Trust," which was identical to the "Trust" she claimed she did not recognize at her deposition and at trial. (Kealoha's Transmittal Letter, dated March 17, 2008, from Katherine Puana Kealoha, Esq. Government's Exhibit 69-1 and the Revocable Living Trust Agreement (for Gerard K. Puana), Government's Exhibit 69-2, Exhibits 11 and 12).

First American Title was subpoenaed to produce all of its records, but Katherine Kealoha's March 17, 2009 Transmittal Letter and the "Trust" were not produced. (Subpoena Duces Tecum (Exhibit 13), Notice of Taking Deposition upon Written Questions (Exhibit 14) and Response by Margaret Bowen, for First American Title Co., Exhibit 15). This was the same "Trust" produced by Katherine Kealoha's attorneys on September 18, 2014, which shows she lied at her deposition and at trial, that she did not recognize the "Trust" as the one she signed. (Exhibit 71 to Katherine Kealoha's Deposition, September 26, 2014, Exhibit 22 and Trial Exhibit P-45, Exhibit 24).

The "Trust" Katherine Kealoha had "transmitted" to First American Title and the "Trust" at her deposition and trial, were all 14 pages long, not 4 to 5 pages, had black borders around the pages, "blank space" next to the signature lines, did not have a "long line" for the date and all had a "Schedule A". Katherine Kealoha lied by claiming that "Trust" she signed did not have these features. Both First American Title and Katherine Kealoha did not produce the Transmittal Letter and the attached "Trust" so there was no way to compare the "Trust" documents to determine if they were the same and that she was lying. It was only after the Government obtained Kealoha

transmittal letter and the attached “Trust” in the criminal Mailbox case in June 2019, that Plaintiffs learned Kealoha had transmitted the same “Trust” to First American Title and lied at her deposition and at trial, when she falsely testified that she “did not recognize” the same “Trust.”

D. KATHERINE KEALOHA ACTUALLY ORDERED THE “TRUST” SHE CLAIMED GERARD PUANA GAVE HER AND LIED THAT SHE DID NOT RECOGNIZE THE “TRUST”.

Katherine Kealoha lied when she testified that she did not prepare the “Trust,” but Gerard Puana gave her a “computer-generated trust.” The Government obtained records that Katherine Kealoha had actually purchased a “Revocable Living Trust Agreement” from US Legal. On June 13, 2019, the Government filed a motion in limine to allow evidence in the criminal Mailbox case that Katherine Kealoha lied at her deposition and that she had purchased a “Revocable Trust” online from U.S. Legal on March 22, 2009 for \$26.90. (Government’s Motion in Limine, w/ Exhibits from US Legal, Exhibit 26). “Exhibit 2” to the Government’s motion was a “form” Revocable Living Trust Agreement which was identical in content and language as the “Trust” Katherine Kealoha transmitted to First American Title on March 17, 2009 (Exhibit 12), and lied at her deposition and trial, that it was not the same document. All of the “Trust” documents have the identical form, content and language, the only “difference” is the absence of “black borders” on the US Legal “trust form” and “blanks” to fill-in, but the form and content are identical.

The Transaction Details, Exhibit 1, email address for the order was “kathykealoha@yahoo.com.” The order for the “trust form” was under the name, “Florence Puana,” but the address was 1018 Kealaolu Avenue, Honolulu, Hawaii 96816, Katherine Kealoha’s home address.

Q. What is your current address?

A. 1018 Kealaolu Avenue.

Q. How long have you lived at that property? A year. Since when?

A. Since 2005.

(Deposition of Katherine P. Kealoha, Vol. 1, dated June 19, 2013, pp. 6-7, Exhibit 27).

Katherine Kealoha ordered the “revocable living trust” from US Legal on March 29, 2009 because she had never prepared trusts in her practice. Katherine Kealoha “fabricated” the “Trust” notarized it as “Alison L. Wong” and lied under oath that she did not recognize the “Trust.”

E. “ALISON LEE WONG” WAS ANOTHER “FABRICATION” OF KATHERINE KEALOHA, WHO “CREATED” BOTH THE “TRUST” AND “ALISON LEE WONG.”

Katherine Kealoha also lied about “Alison Lee Wong” the “notary” of the “Trust.”

Katherine Kealoha claimed at her deposition that she knew “an Alison Wong,” but that Alison Wong she knew. did not notarize the “Gerard Puana Trust.” Katherine Kealoha testified,

Q. Okay. You said that you knew Alison Wong?

- A. Yes.
- Q. What does Alison Wong do?
- A. She used to be like one of those paralegals who would help attorneys for different – you know, big cases or big filings.
- Q. Did she work in any organization that you worked in like was she an employee of a firm, government agency or anything?
- A. No.

* * *

- Q. When was the last time you saw Alison Wong, the one that you know?
- A. I would say in either 2008 or 2009, yeah, at Home Depot.
- Q. You don't know that her address is?
- A. No. I have not talked to her in a while.
- Q. And the Alison Wong that you know was not the notary on the Gerard Puana Trust?
- A. No, she was not.
- Q. And that's the only Alison Wong that you know?
- A. Yes.

(Katherine Kealoha's Deposition, Vol. II, dated September 26, 2014, pp. 81-82, Exhibit 28)

However, the Government had evidence that Katherine Kealoha was "Alison Lee Wong."

The Government's Trial Brief, filed May 2, 2019 provided information that Katherine Kealoha used the alias "Alison Lee Wong." (U.S. Trial Brief, filed May 2, 2019, Exhibit 6, Excerpt, pp. 29-32, Exhibit 29). In September 2011, Katherine Kealoha sent emails to Rick Ornella using her alias "Alison Lee Wong," claiming she was Katherine Kealoha's "secretary from Arbonne and her law office" so it would appear "Alison Lee Wong" actually existed. (Emails from Alison Wong to Rick Ornella, Government's Exhibits 81-2, 81-3, 81-4, 81-5, 81-6, 81-7, 81-8, 81-9, 81-10, Exhibit 30).

Katherine Kealoha, as "Alison Wong" even wrote a letter of recommendation to support of Katherine Kealoha's appointment as Director of the Office of Environmental Quality Control.

(Letter of Support from "Alison Wong," Exhibit 31). An almost identical "Letter of Support" was also submitted by Minh-Hung Nguyen, Katherine Kealoha's co-defendant in the criminal Mailbox case who was also convicted. (Letter of Support by Minh-Hung Nguyen, Exhibit 32).

The Government also found that Katherine Kealoha had ordered a Hawaii Notary Seal Embosser for "Alison Lee Wong." The order was made by "Director," "c/o Kathryn Aloha," the Company Name was "OEQC" and the address was, 235 S. Beretania Street, #702, Honolulu, Hawaii 96813. (American Association of Notaries, Government's Exhibit 54-1, 66-B, 66-6, 66-7, Exhibit 33). The OEQC address was 235 S. Beretania Street, #702. The Greenwood Apt. 1803 Apartment Deed (To Trust) identified "Katherine P. Kealoha, Trustee, OEQC 235 S. Beretania St. #702, Honolulu, Hi. 96813." (Apartment Deed (To Trust), Exhibit 4). Katherine Kealoha testified she was the Director of the Office of Environmental Quality Control (OEQC) in 2008

Q. After 2008, what did you do?

A. Worked for the State.

Q. What position did you hold with the state?

A. The Director of the Office of Environmental Quality Control.

(Katherine Kealoha's Deposition, Vol. I, June 19, 2013, pp. 17-18, 108-109, Exhibit 34),

The Government in the Mailbox case showed that "Alison Lee Wong" did not exist but was Katherine Kealoha's alias she used to "misdirect and conceal" her lies and deception. Katherine Kealoha lied when testifying she knew an "Alison Wong," when in fact she is "Alison Lee Wong."

II. ARGUMENT

A. KATHERINE KEALOHA'S FRAUD UPON THE COURT WARRANTS A NEW TRIAL. THE CIRCUIT COURT MAY DETERMINE IF A NEW TRIAL SHOULD BE GRANTED EVEN IF THE CASE IS PENDING ON APPEAL.

The circuit court has authority to grant a new trial when there has been a "fraud on the court." HRCP Rule 60(b) provides for post-judgment relief and states in relevant part,

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc.

On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, . . . for the following reasons: . . .

(6) Any other reason justifying relief from the operation of the judgment.

. . . A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding, or to set aside a judgment for fraud upon the court. . . . (Emphasis added).

The appeal of the civil action is pending, however a HRCP, Rule 60(b) motion for new trial may be made to the circuit court if there is a pending appeal of the case. In *Life of the Land v. Ariyoshi*, 57 Haw. 249, 252, 553 P.2d 464 (1976), the Supreme Court held,

"[w]here an appeal is pending in this court, . . . the [HRCP Rule 60(b)] motion may be made and considered in the circuit court. If that court indicates that it will grant the motion, the appellant may then move in this court for a remand of the case. During the pendency of the motion in the circuit court, the parties may move in this court for such relief from the appeal requirements as may be appropriate. . . .

Such motion under Rule 60(b) as Appellants desire to make in this case may be made in the circuit court without a remand of the case. In the event that the circuit court determines that the motion should be granted, it should so certify and a motion to remand should be made in this court." (Emphasis added).

Katherine Kealoha ordered a "form revocable trust" from US Legal, "created/fabricated" the "Gerard Puana Revocable Trust," signed and "notarized" it as "Alison L. Wong," her alias, transmitted her copy of the "Trust" to First American Title not to Central Pacific Home Loans, then

lied at her September 26, 2014 deposition and at trial that she did not recognize the same “Trust” she had “fabricated.” The circuit court should find that Katherine Kealoha committed fraud upon the court and Florence Puana and Gerard Puana are entitled a new trial under HRCP, Rule 60(b)(6).

In Kawamata Farms, Inc. v. United Agri Products, 86 Haw. 214, 256, 948 P.2d 1055 (1997), the Hawaii Supreme Court held, “[T]he trial court has a very large measure of discretion in passing upon motions under HRCP Rule 60(b)” Notably, “The record shows that DuPont committed discovery fraud upon the circuit court and the other parties. Fraud upon the court, ‘is a wrong against the institution set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society. . . A trial court has a duty and right to determine that its judgments are correct and accurately reflect the truth.’”

The U.S. Supreme Court has recognized the inherent power of the courts to set aside a judgment when its enforcement would be “manifestly unconscionable” by a fraud on the court. In Hazel-Atlas Glass Co., v. Hartford-Empire Co., 322 U.S. 238, 246, 64 S.Ct., 997, 1001, 88 L.Ed 1250 (1944), Hartford-Empire had a pending application for a patent on its glass manufacturing machine which was opposed by the Patent Office. Hartford and its attorney’s concocted a scheme to have an article signed by an “ostensibly disinterested expert” to be published in a trade journal. One of Hartford’s attorneys actually wrote the favorable article about Hartford’s machine and after its publication in a trade journal, the “article” was made a part of the record to support Hartford’s patent application, which the Patent Office granted.

Hartford later sued Hazel-Atlas (“Hazel”) for infringement of this patent, but the suit was dismissed finding no patent infringement. Hartford appealed and directed the appellate court’s attention to the “false article.” The court of appeals relied on the “article” and found Hartford’s patent valid and Hazel’s patent infringement.

Several years later, the US government filed suit against Hartford for anti-trust violations. Evidence of the “false article” Harford used to “successfully appeal” its patent infringement suit came to light. In the appeal to the U.S. Supreme Court, Justice Black held that,

“Every element of the fraud here disclosed demands the exercise of the historic power of equity to set aside fraudulently begotten judgments. This is not simply a case of a judgment obtained with the aid of a witness who, on the basis of after-discovered evidence, is believed possibly to have been guilty of perjury. Here, . . . we find a deliberate planned and carefully executed scheme to defraud not only the Patent Office but the Circuit Court of Appeals. . . Furthermore, tampering with the administration of justice in the manner indisputably shown here involves far more than an injury to a single litigant, it is a wrong

against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society."

As for the disposition of the matter, Justice Black stated,

"Hartford's fraud, hidden for years but now admitted, had its genesis in the plan to publish an article for the deliberate purpose of deceiving the Patent Office. The plan was executed, and the article was put to fraudulent use in the Patent Office, contrary to law. From there the trail of fraud continued without break through the District Court and up to the Circuit Court of Appeals. Had the District Court learned of the fraud on the Patent Office at the original infringement trial, it would have been warranted in dismissing Hartford's case. The total effect of all this fraud, practiced both on the Patent Office and courts, call for nothing less than a complete denial of relief to Hartford for the claimed infringement of the patent thereby procured and enforced. Since the judgments of 1932 therefore must be vacated, the case now stands in the same position as though Hartford's corruption had been exposed at the original trial." (Emphasis added)

Hazel-Atlas is almost identical to this matter where the Government in the criminal Mailbox case uncovered Katherine Kealoha's fraud of "ordering" a "revocable trust form" from US Legal, "fabricating" the "Gerard K. Puana Trust," notarizing the Trust under her alias, "Alison Lee Wong," then lying at her deposition and at trial that she did not recognize the "Trust" she had fabricated. *Cosmopolitan Financial Corp. v. Runnels*, 2 Haw. App. 33, 39, 625 P.2d 390 (1981) (A document is fraudulent if it is falsely made or caused to be made with the intent to deceive).

Katherine Kealoha created/fabricated the "Gerard Puana Revocable Trust," transmitted it to First American Title, then testified the "Trust" she had transmitted was not the same "Trust." By failing to identify the "Trust" which she had actually "fabricated," Katherine Kealoha prevented its introduction into evidence in the civil trial which would have exposed Katherine Kealoha's fraud. Gerard Puana never had a copy of the purported "Trust" and had not signed it, so Gerard Puana could not authenticate the "Trust" unless he committed perjury himself and identified the signature on the "Trust" as his own, which he did not and would not do.

If the "Trust" was admitted into evidence at trial, its "discrepancies" would show that while Katherine Kealoha claimed to be the "Trustee," it actually states Gerard Puana was the "Trustee" and Katherine Kealoha was its "Successor Trustee." Exhibit A, to the "Trust" which was the purported "Trust estate" included "\$230,000 in cash, an IRA account BC17964 estimated to be \$397,000, Hawaiian Electric stocks with an estimated value of \$92,000, a Morgan Stanley Investment Funds estimated at \$460,500 and two parcels of real property in Brentwood, California. The liquid assets alone in Schedule A amounted to \$1,179,500. If Gerard Puana had these "Trust" assets, then why was the reverse mortgage required to purchase the Greenwood Apt. 1803?

B. THE GOVERNMENT OBTAINED DOCUMENTS THAT KATHERINE KEALOHA SUPPRESSED, WITHHELD, FABRICATED OR DISAVOWED AND COMMITTED PERJURY, WHICH WAS A FRAUD UPON THE COURT.

Katherine Kealoha was a licensed attorney while she was actively engaged in defrauding Gerard Puana and Puana, during the civil lawsuit and trial up through the criminal Mailbox case in June 2019. As a licensed attorney, Katherine Kealoha was an “officer of the court” and her perjury, fraud, misrepresentations and misconduct was a fraud on the court. The Hawaii Rules of Professional Responsibility, Preamble: A Lawyer’s Responsibilities states, “[1] A lawyer is a representative of clients, an officer of the legal system, and a public citizen having special responsibilities for the quality of justice.” It was only on July 3, 2019, after her criminal conviction in United States v. Katherine P. Kealoha, et al., Criminal 17-CR-00582 JMS-WRP, that the Hawaii Supreme Court suspended Katherine Kealoha’s license to practice law. (Hawaii Supreme Court Order Granting Petition, ODC Case No. 17-0-026, filed July 3, 2019, Exhibit 35).

In Southwest Slopes, Inc. v. Lum, 81 Haw. 501, 511, 918 P.2d 1157 (App. 1996), the ICA took judicial notice of the entire record of the Create 21/Southwest prior lawsuit, that cancelled the purchase of the same property from Southwest due to significant archeological sites, communicated to Robert L. Smith, Southwest’s attorney. “[T]he above affidavits by Smith and Rice appear to be no less than misrepresentations. We refer this possible fraud upon the court to the circuit court for appropriate investigation and action. The possibility that Plaintiffs used fraud upon the court when obtaining the summary judgment in their favor motivates us to vacate and remand.” “Fraud, misrepresentation, and circumvention used to obtain a judgment are generally regarded as sufficient cause for the opening or vacating of the judgment.” 47 Am Jur 2d Judgments § 831 (1995).

In Gonsalves v. Ikei, 47 Haw. 145, 384 P.2d 300 (1963), plaintiffs sought specific performance of a lease, bill of sale and consent to a mortgage. The trial court found that Higa, a real estate broker had Ikei, who could not read English, sign documents and Higa also had William Ho, a notary public, sign a false acknowledgement that Ikei had appeared and executed the documents as her own free act and deed, when Ikei never appeared before the notary. The trial court denied plaintiffs specific performance. On appeal, the court held, “The fraud which was committed by the real estate broker Higa, . . . is they type of fraud known as fraud in the factum or fraud in the execution. . . The fraud perpetrated on defendant Ikei went to the nature of the document and not mere details, and therefore, all of the documents were void and not merely voidable.”

Katherine Kealoha's fraud on the court was similar to *Ikei* in that she "created/fabricated" the "Trust" and notarized it as "Alison L. Wong." The main difference is that Katherine Kealoha was also a licensed attorney and an "officer of the court." Katherine Kealoha lied when testifying that she did not recognize the "Trust" and it was not the same document that she signed. The "Trust" Katherine Kealoha ordered from US Legal, transmitted to First American Title, which was produced by her attorneys, which she lied at her deposition and at trial that, "she did not recognize" all the same language and format and was the same "Trust" Katherine Kealoha had "fabricated."

In re Intermagnetics America, Inc., 926 F.2d 912, 916 (9th Cir. 1991) was an appeal of a bankruptcy proceeding where Amarjit Anand, the debtor in possession filed a false and fraudulent declaration the Bankruptcy Court relied on to approve the sale of Intermagnetics. The Ninth Circuit held, "'Fraud upon the court' should, we believe, embrace only that species of fraud which does or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery can not perform in the usual manner its impartial task of adjudicating cases that are presented for adjudication." 7 J. Moore & J. Lucas, Moore's Federal Practice ¶ 60.33 at 515 (2d ed. 1978). "Thus, fraud upon the court includes both attempts to subvert the integrity of the court and fraud by an officer of the court." "[T]he inquiry as to whether a judgment should be set aside for fraud upon the court under Rule 60(b) focuses not so much in terms of whether the alleged fraud prejudiced the opposing party but more in terms of whether the alleged fraud harms the integrity of the judicial process." The sale was conditioned on the truthfulness of Anand's declaration. "Offices of a debtor-in-possession are officers of the court because of their responsibility to act in the interest of the estate as a whole and the accompanying fiduciary duties." The court rejected the argument that Anand was acting outside his authority when he committed the fraud and ceased being an officer of the court because, "Such a rule would operate to shield fraudulent activity by an officer of the court by virtue of the fraudulent activity itself."

In *Pumphrey v. K.W. Thompson Tool Co.*, 62 F.3d 1128 (9th Cir. 1995), the Ninth Circuit held that Thompson's vice-president and general counsel Edward Bartlett was an officer of the court and committed a fraud upon the court by failing to disclose or produce a second videotape of a handgun firing after being dropped, which had been produced in an unrelated, but similar lawsuit. Bartlett was not admitted to practice in Idaho where the trial was held, he did not enter an appearance, was not admitted pro hac vice and did not sign any documents filed with the court, but had participated significantly by attending the trial on behalf of Thompson, gathered information to

respond to discovery requests, framed answers to interrogatories, participated in the videotaping both tests and had possession of both videotapes. Bartlett also attended depositions in two other cases where a witness lied that the gun did not fire when it was dropped.

"Thompson, through Bartlett, engaged in a scheme to defraud the jury, the court, and Sparks through the use of misleading, inaccurate, and incomplete responses to discovery request, presentation of fraudulent evidence, and failure to correct the false impression created by French's testimony. The end result of the scheme was to undermine the judicial process, which amounts to fraud upon the court."

Pumphrey is similar, but in this case, Katherine Kealoha precipitated and actively participated in the fraud on the court. Katherine Kealoha falsely testified at her depositions and at trial that Gerard Puana gave her a "computer-generated" trust, when she had "ordered" a form revocable trust from US Legal, "fabricated and created" the "Trust," notarized it using her alias, "Alison Wong," lied that she gave her copy to Central Pacific Home Loans, then lied at her deposition and at trial that it was not the "Trust" she had signed. "Since attorneys are officer of the court, their conduct, if dishonest, would constitute a fraud on the court." *H.K. Porter Co., Inc. v. Goodyear Tire & Rubber Co.*, 536 F.2d 1115, 1119 (6th Cir. 1976); "Perjury may constitute fraud on the court if it involves... an officer of the court." 12 J. W. Moore, Moore's Federal Practice § 60.21[4][c]; Great Coastal Express, Inc. v. Int'l Brotherhood of Teamsters, 675 F.2d 1349, 1357 (4th Cir. 1982); "A trial court has a duty and a right to determine that its judgments are correct and accurately reflect the truth." *Potter v. Eli Lilly and Co.*, 926 S.W.2d 449, 453 (Ky. 1996).

As a result of Katherine Kealoha's perjury that she did not recognize the "Trust," the "Trust" was not admitted into evidence at trial. Katherine Kealoha's skill and expertise in "deception and obfuscation" shielded her fraud and misconduct from scrutiny in the civil action. It was unconscionable for Katherine Kealoha to "game and manipulate" the judicial system, where she, as an officer of the court had sworn to protect, uphold and safeguard the interests of the public. The Government utilized its resources to untangle Katherine Kealoha's elaborate "web of deception" and fraudulent activities against Gerard Puana, Florence Puana and the judicial system. Katherine Kealoha, as a licensed attorney and "officer of the court" lied and committed a fraud upon the court. "The judgment is the last word of the law in any judicial controversy. Therefore, fraud, misrepresentations, and circumvention used to obtain a judgment are generally regarded as sufficient cause for the opening or vacating of the judgment." *Kawamata Farms, Inc., v. United Agri Products*, 86 Haw. 214, 257, 948 P.2d 1055 (1997). The judgment in this case was a "product" of Katherine Kealoha's deceit and fraud upon the court, and it should be vacated.

C. THE CIRCUIT COURT HAS THE INHERENT POWER TO VACATE THE JUDGMENT FOR KATHERINE KEALOHA'S FRAUD ON THE COURT AND GRANT A NEW TRIAL.

The circuit court has the inherent authority to grant a new trial pursuant to HRCP Rule 60(b)(6) based on Katherine Kealoha's fraud upon the court. In *Farrow v. Dynasty Metal Systems, Inc.*, 89 Haw. 310, 313, 972 P.2d 725 (App. 1999), the ICA held, "Inherent powers of the court are derived from the state Constitution and are not confined by or dependent on statute. Among courts' inherent powers are the powers 'to create a remedy for a wrong even in the absence of specific statutory remedies,' and 'to prevent unfair results.' The courts also have inherent power to curb abuses and promote a fair process which extends to the preclusion of evidence and may include dismissal in severe circumstances. . . it necessarily has the power to take all reasonable steps short of dismissal, depending on the equities of the case."

The court in *Moyle v. Y & Y Hyup Shin Corp.*, 116 Haw. 388, 173 P.3d 535, 560 (2007), rev'd on other grounds, 118 Haw. 385, 191 P.3d 1062 (2008) held, "The federal courts have long recognized the inherent power of courts to set aside a judgment whenever its enforcement would be 'manifestly unconscionable because of 'fraud on the court.'" The ICA noted that it is, "limited to fraud that 'seriously' affects the integrity of the normal process of adjudication' which includes, "fraud by and officer of the court, including an attorney." *In re Genesys Data Techs, Inc.*, 204 F.3d 124, 130 (4th Cir. 2000). "A judgment may be set aside at any time for after-discovered fraud upon the court. Where a court is misled as to material circumstances, or its process is abused, resulting in the rendition of a judgment which would not have been given if the whole conduct of the case had been fair, the court has inherent power to vacate for fraud and that power includes as well the power to modify." Citing *Halloran v. Blue & White Liberty Cab Co.*, 92 N.W.2d 794 (MN. 1958).

Farmer v. Administrative Director of the Court, 94 Haw. 232, 241, 11 P.3d 437 (2000) held that, "Inherent power of the court is the power to protect itself; the power to administer justice whether any previous form of remedy has been granted or not; . . ." "Our courts are not gambling halls but forums for the discovery of truth." *State v. Haanio*, 94 Haw. 405, 415, 16 P.3d 246 (2001); "Fraud upon the court, 'is a wrong against the institution set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society.'" *Kawamata Farms, Inc. v. United Agri Prod.*, 86 Haw. 214, 948 P.2d 1055 (1997); "When a court vacates a judgment obtained by fraud, it not only rids itself of the defilement caused by the fraud, but also restores balance and fairness between the parties by removing the benefit gained by

the party that committed the fraud.” *In re Levander*, 180 F.3d 1114, 1118 (9th Cir. 1999). Courts may investigate and determine if it has been the victim of fraud. “The inherent power of a federal court to investigate whether a judgment was obtained by fraud is beyond question.” *Universal Oil Products Co. v. Root Refining Co.*, 328 U.S. 575, 580, 66 S.Ct. 1176, 90 L.Ed. 1447 (1946).

Katherine Kealoha, an “officer of the court,” fabricated documents then committed perjury. “[I]t is within the discretion of the trial court to grant a new trial on the basis of revelation of willfully false testimony substantially affecting the result. . . it is manifestly unjust to permit the plaintiff to gather the fruits arising out of such willfully false testimony.” *Balip Automotive Repairs, Inc. v. Schroeder*, 73 A.2d 848 (NJ 1950); *Gedders v. United States*, 425 U.S. 80, 93, 96 S.Ct. 1330, 1337, 47 L.Ed.2d 592 (1976) (If our adversary system is to function according to design, we must assume that an attorney will observe his or her responsibilities to the legal system). In *Shammas v. Shammas*, 88 A.2d 204, (N.J. 1952), New Jersey Supreme Court Judge William Brennan, later Supreme Court Justice held, “All perjury is an affront to the dignity of the court and to the integrity of the judicial process, . . . We prefer to follow the equity of the matter and to take away an unjust judgment obtained by vital perjury when the injustice and inequity of allowing to stand are made evident.” Katherine Kealoha lied when she testified she did not prepare the “Trust,” that Gerard Puana provided a “computer generated trust” and falsely testified at her deposition and trial, that she did not recognize the “Trust.” The judgment was a result of Katherine Kealoha’s fraud upon the court which should be vacated and new trial granted.

III. CONCLUSION

Katherine Kealoha was convicted on June 27, 2019 in the Mailbox case. The Government obtained documents and evidence which Katherine Kealoha deliberately and consciously withheld and openly lied at her deposition and trial. Katherine Kealoha was a licensed attorney and “officer of the court,” who actively engaged in deception and fraud. This court should find that Plaintiffs are entitled to a new trial under HRCP, Rule 60(b)(6) for Katherine Kealoha’s fraud upon the court.

DATED: Honolulu, Hawaii, AUG 22 2019



GERALD H. KURASHIMA

Attorney for Plaintiffs & Counterclaim Defendants Florence Puana, individually, and as Trustee of the Florence M. Puana Semi-Revocable Living Trust, dated September 15, 1992, and Gerard K. Puana, individually, and as Trustee of the Gerard K. Puana Revocable Trust, dated January 19, 2007

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

FLORENCE PUANA, INDIVIDUALLY, AND AS) CIVIL NO. 13-1-0686-03 [VLC]
TRUSTEE OF THE FLORENCE M. PUANA SEMI-) [OTHER CIVIL ACTION]
REVOCABLE TRUST, DATED SEPTEMBER 15,)
1992; GERARD K. PUANA, INDIVIDUALLY, AND) DECLARATION OF GERALD H.
AS TRUSTEE OF THE GERARD K. PUANA) KURASHIMA
REVOCABLE TRUST, DATED JANUARY 19, 2007,)

Plaintiffs/Counterclaim Defendants,)
)
vs.)
)
KATHERINE P. KEALOHA, INDIVIDUALLY,)
AND KATHERINE P. KEALOHA AS FORMER)
TRUSTEE OF THE GERARD K. PUANA)
REVOCABLE TRUST, DATED JANUARY 19,)
2007; et al.,)
Defendants/Counterclaimant.)
)

DECLARATION OF GERALD H. KURASHIMA

I, GERARD H. KURASHIMA, hereby declare that the following is true and correct to the best of my knowledge, under penalty of law.

1. I am an attorney at law licensed to practice in all courts in the State of Hawaii.
2. I am Plaintiffs Florence Puana and Gerard Puana's attorney in the above-captioned matter and have personal knowledge of the matters set forth herein.
3. Exhibits 1, is a true and correct copy of the criminal Indictment of Katherine Kealoha and others in the U.S. District Court, United States v. Katherine P. Kealoha aka Katherine E. Kealoha, aka Kathy Kealoha, aka Kat, aka Alison Lee Wong, Louis Kealoha, et. al., CR-17-00582 JMS. The Indictment was unsealed on October 20, 2017.
4. Exhibit 2 is a true and correct copy of the Consumer Signature Card for the Bank of Hawaii Joint Account No. ***1502, for Katherine Puana Kealoha and Florence Puana.
5. Exhibit 3 is a true and correct copy of the Bank of Hawaii, October Statement for Account ***1502, showing the wire transfer of \$513,474.20 from the reverse mortgage on Florence Puana's home and payment of \$360,439.49 for the purchase of the Greenwood Apt. 1803 property.
6. Exhibit 4 is a true and correct certified copy of the Apartment Deed (To Trust) for the Greenwood Apt. 1803 with, "Katherine P. Kealoha, Trustee of the Gerard K. Puana Revocable Trust, dated January 7, 2007," as "Grantee."

7. Exhibit 5 are true and correct copies of the Bank of Hawaii Statements for the Joint Account No. ***1502, from October 2013 to April 2014, where the initial balance for the reverse mortgage funds was \$14,514.64 and the ending balance was \$208.96 after Katherine Kealoha withdrew or spent all of the funds in the joint account.

8. Exhibit 6 is a true and correct copy of the U.S. Department of Justice Trial Brief, filed on May 2, 2019 in CR-17-00582 JMS-RLP.

9. Exhibit 7 are true and correct copies of the Jury Verdicts in CR-17-00582 JMS-RLP, where Katherine Kealoha was convicted in the U.S. District Court.

10.. Exhibit 8 is a true and correct copy of Gerard Puana's First Request for Production of Documents to Katherine Kealoha for the Gerard Puana Revocable Trust and related documents.

11. Exhibit 9 is a true and correct copy of Katherine Kealoha's Response to the Request for Production of Documents, with "None" to the request for the "Gerard Puana Revocable Trust."

12. Exhibit 10 is a true and correct copy of Excerpts of Katherine Kealoha's Deposition, Volume I, taken on June 19, 2013, testifying that she had never prepared any trusts in her legal practice, that Gerard Puana gave her a "computer-generated" trust, and she gave her copy of the trust to Central Pacific Home Loans.

13. Exhibit 11 is a true and correct copy of Katherine Kealoha's Transmittal Letter dated March 17, 2008 to Kristina Sweet of First American Title, with her copy of the "Gerard Puana Revocable Trust." This transmittal letter was not produced by Katherine Kealoha and was not produced by First American Title, in the Subpoena for its records and files. The U.S. Government obtained this document for the Mailbox case, as "Government's Exhibit 69-1."

14. Exhibit 12 is a true and correct copy of the "Gerard Puana Revocable Trust" that Katherine Kealoha transmitted to First American Title. This was the same trust produced by her attorneys on September 18, 2014 and it is identical to the trust which Katherine Kealoha testified at her deposition and at trial, the she did not recognize, as the trust she signed.

15. Exhibits 13, 14 and 15 are true and correct copies of the "Subpoena Duces Tecum," "Notice of Taking Deposition upon Written Questions" and the response by Margaret Bowen of First American Title that all of the records produced are complete and that no records have been removed. The March 17, 2008 Transmittal Letter by Katherine Kealoha and a copy of the Gerard Puana Revocable Trust, were not produced by Margaret Bowen of First American Title.

16. Exhibit 16 is a true and correct copy of Gerard Puana Declaration on June 13, 2014, that he never received a copy of the “Gerard Puana Revocable Trust” from Katherine Kealoha.

17. Exhibit 17 is a true and correct copy of the Minutes of the July 16, 2014 Hearing on Gerard Puana’s motion to transfer the Greenwood Apt. 1803 title. The Court was advised he does not have a copy of the trust and Katherine Kealoha’s attorneys did not disclose they had the trust.

18. Exhibits 18, 19, 20 and 21 are a true and correct copies of the transmittal letter from Katherine Kealoha’s attorneys on September 18, 2018, transmitting the “Gerard Puana Revocable Trust” which was “received from First American Title,” a copy of the “Trust,” and two letters from the State Attorney General, Notary Public Office, dated May 23, 2014 and July 14, 2014, showing they had the “Trust” since May 9, 2014 and that the “Notary, Alison L. Wong” did not exist.

19. Exhibit 22 is a true and correct copy of the “Gerard Puana Revocable Living Trust” that Exhibit 71 to Katherine Kealoha’s deposition, Volume II on September 26, 2014.

20. Exhibit 23 is a true and correct copy of excerpts of Katherine Kealoha’s deposition on September 26, 2014 who testified under oath that she recognized her signatures on the “Trust” but Exhibit 71, was not the trust document she signed. Katherine Kealoha claimed the trust she signed did not have “black borders” around the pages, that there were no “blank space” next to the signature line and that there was a “long line” for the date.

21. Exhibit 24 is a true and correct copy of the “Gerard Puana Revocable Living Trust” that was marked for identification as Exhibit P-45, for trial.

22. Exhibit 25 is a true and correct copy of excerpts of Katherine Kealoha’s trial testimony on February 6, 2015, where Katherine Kealoha testified under oath that her signatures were on the trust document, but testified that she did not sign Trial Exhibit P-45 and that the trust she signed was only four to five pages long, there was not Schedule A and there were separate pages for the signatures and notarization.

23. Exhibit 26 is a true and correct copy of the U.S. Government’s Trial Brief, filed June 13, 2019, in CR-17-00582 JMS-RLP.

24. Exhibit 27 is a true and correct copy of excerpts of Katherine Kealoha’s deposition on June 19, 2013, where she testified that her home address was 1018 Kealaolu Avenue and had lived at the property since 2005.

25. Exhibit 28 is a true and correct copy of excerpts of Katherine Kealoha's deposition on September 26, 2014 where she testified that she knew "an" Alison Wong, but the "Alison Wong" she knew was not a notary and she last saw her at Home Depot in 2008 or 2009.

26. Exhibit 29 is a true and correct copy of Excerpts of the U.S. Government's Trial Brief, regarding "Alison Lee Wong."

27. Exhibit 30 are true and correct copies of "emails from Alison Wong" to Rick Ornellas, in 2011, where "Alison Wong" claimed to be Katherine Kealoha's secretary. The emails were used by the Government in CR-17-00582 JMS-RLP, and were "Government's Exhibits, 81-2, 81-3, 81-4, 81.5, 81-6, 81-7, 81-8, 81-9, and 81-10.

28. Exhibit 31 is a true and correct copy of an "email from Alison Wong," dated February 20, 2008, to support Katherine Kealoha's appointment as Director for the State of Hawaii Office of Environmental Quality Control (OEQC).

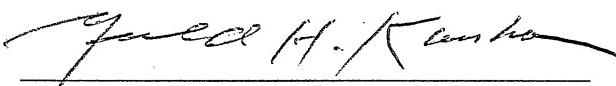
29. Exhibit 32 is a true and correct copy of an almost identical letter of support for the appointment of Katherine Kealoha as Director for the State of Hawaii Office of Environmental Quality Control (OEQC) by Min-Hung Nguyen, a co-defendant with Katherine Kealoha in CR-17-00582 JMS-RLP, who was also convicted. (See Exhibit 7)

30. Exhibit 33 are true and correct copies of the Government's Exhibits 54-1, 66-8, 66-6 and 66-7, showing an order to the American Association of Notaries, for a Hawaii Notary Seal Embosser for "Alison Lee Wong." The order was made by the, "Director, c/o Kathryn Aloha, OEQC, 235 S. Beretania Street, #702, Honolulu, Hawaii."

31. Exhibit 34 is a true and correct copy of excerpts of Katherine Kealoha's deposition on June 19, 2013, where she testified that in 2008, she was the Director of the State of Hawaii, Office of Environmental Quality Control (OEQC).

32. Exhibit 35 is a true and correct copy of the Hawaii Supreme Court's, ?Order Granting Petition," filed on July 3, 2019, for the immediate suspension of Katherine Kealoha from practicing law as a result of her conviction in United States v. Katherine P. Kealoha aka Katherine E. Kealoha, aka Kathy Kealoha, aka Kat, aka Alison Lee Wong, Louis Kealoha, et. al., CR-17-00582 JMS-RLP.

DATED: Honolulu, Hawaii: AUG 22 2019


GERALD H. KURASHIMA

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

FLORENCE PUANA, INDIVIDUALLY,
AND AS TRUSTEE OF THE FLORENCE
M. PUANA SEMI-REVOCABLE TRUST,
DATED SEPTEMBER 15, 1992; GERARD
K. PUANA, INDIVIDUALLY, AND AS
TRUSTEE OF THE GERARD K. PUANA
REVOCABLE TRUST, DATED JANUARY
19, 2007,

NOTICE OF HEARING

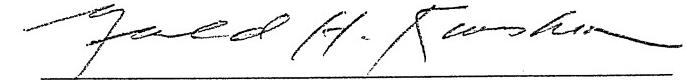
NOTICE IS HEREBY GIVEN that the subject motion shall be heard before the Honorable James McLeishianie, Judge of the above-entitled court, in his/her courtroom, at 777 Punchbowl Street, 4th Floor, Honolulu, Hawaii 96813, on Friday, Sept 13, 2019 2019, at 9:30 a.m., or as soon thereafter as counsel can be heard.

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing will be served and delivered to:

KEVIN P.H. SUMIDA, ESQ
ANTHONY WONG, ESQ.
Dillingham Transportation Building
735 Bishop Street, Suite 411
Honolulu, Hawaii 96813
Attorney for Katherine P. Kealoha, individual
Katherine P. Kealoha as former Trustee
K. Puana Revocable Trust, dated January 1, 2000
DATED: Honolulu, Hawaii. AUG 5

DATED: Honolulu, Hawaii. AUG 22 2019



GERALD H. KURASHIMA

Attorney for Plaintiffs & Counterclaim Defendants
Florence Puana, individually, and as Trustee of the
Florence M. Puana Semi-Revocable Living Trust,
dated September 15, 1992 and Gerard K. Puana,
individually, and as Trustee of the Gerard K. Puana
Revocable Trust, dated January 19, 2007